

To All Interested Parties:

Enclosed is an "Invitation to Tender" for a Licensing Agreement for Operation of Food and Beverage Service Facilities, at the United States Embassy compound located in Gigiri, Nairobi. Enclosure 1 consists of the proposed Licensing Agreement, which would be executed between the Licensor and the selected operator (the Licensee). The document known as "the Agreement," consists of Enclosure 1 and four Exhibits:

- Exhibit A Performance Required Under the Licensing Agreement
- Exhibit B Licensor-Furnished Property
- Exhibit C Holiday Schedule
- Exhibit D Ethics and Sexual Harassment

Enclosure 2 contains instructions for tender preparation as well as the methodology to be used by the Licensor, AEA Board of Directors, in evaluating tenders and for the award of a licensing agreement.

#### Tender Submission and Due Date

All tenders must be submitted electronically via e-mail to the following e-mail address:

NairobiAEA@state.gov

ALL TENDERS MUST BE RECEIVED AT THE U.S. EMBASSY NOT LATER THAN **3.00P.M., THURSDAY, JANUARY 29, 2015**. TENDERS RECEIVED AFTER THIS DEADLINE WILL BE REJECTED WITHOUT CONSIDERATION.

#### Points of Contact

Direct all questions regarding this Invitation to Tender to: Anar Shah, Tel: 3636272, EMAIL: Shahgn@state.gov

There will be a site visit and a conference to allow interested parties the opportunity to pose any questions they may have concerning the Invitation to Tender, and to view the site where services are to be provided. This visit and conference will be held on Tuesday, January 13, 2015 at 10.00a.m. Please notify the AEA General Manager no later than two working days prior to the conference if anyone from your firm wishes to attend. Questions regarding this Invitation to Tender should be submitted in writing at least two working days before the scheduled date of the conference and site visit.

Thank you for your interest in this action.

Sincerely,

**Anar Shah**

**AEA General Manager**

American Employees Association (AEA)  
Nairobi, Kenya

**CONTRACT FOR SUPPORT SERVICES**

Concessionaire Agreement

**I.**

**GENERAL**

A.

Purpose. The purpose of this Agreement is to provide a license to the Licensee to operate food and beverage service facilities, including cafeteria and mobile cafeteria services at the Chancery and USAID buildings located on the U.S. Embassy compound in Gigiri, Nairobi. For the purposes of this agreement, the American Employees Association (AEA) is the Licensor and ..... is the Licensee. The term “parties” refers to the Licensor and Licensee. No United States Government (USG) funds are obligated under this Agreement.

B.

Description of Operations. Subject to the provision of Exhibit A (IV) (A), the Licensee shall establish and operate in the Licensee’s name food and beverage service facilities, including a cafeteria and mobile cafeteria service within the U.S. Embassy compound in Gigiri, Nairobi. These food and beverage service facilities, as described in this Agreement, are to be operated for the benefit of all employees working within the U.S. Embassy compound and official visitors.

**II.**

**PERIOD OF AGREEMENT**

A.

Initial Period of Agreement. This Agreement is effective on April 1, 2015 and shall end one (1) year later.

B.

Subsequent Periods. This Agreement may be extended at the mutual agreement of the parties for a subsequent period of one year. Any extension of less than one year needed by the Licensor will be formalized by an amendment to the agreement and signed by both parties 90 days prior to the end of the agreement. Either party must notify the other in writing 90 days preceding the end of the agreement indicating desire not to renew. Any extension will be formalized by an amendment to the Agreement signed by both parties.

**III.**

**SPECIFICS OF CAFETERIA OPERATIONS**

Cafeteria operations, including details of each party’s responsibilities, are set forth in Exhibit A of this Agreement.

#### **IV.**

##### **LICENSOR PERSONNEL**

###### **A.**

###### **Licensing Officer.**

The AEA Board of Directors serves as the Licensing Officer and has the overall responsibility for the administration of this Agreement. Only the Licensing Officer is authorized to take actions on behalf of the Licensor to amend, modify, or deviate from the Agreement's terms and conditions.

###### **B.**

###### **Technical Representative.**

The Licensing Officer will designate a Technical Representative, (usually the employed Manager of AEA's operations), to assist in administration of this Agreement on the Licensor's and Licensing Officer's behalf. In brief, the Technical Representative serves as a liaison between the Licensee and Licensing Officer/Licensor, and works to see that the Licensee achieves full compliance with this Agreement. If no Technical Representative is available or assigned, the responsibilities of oversight remain with the Licensing Officer.

###### **C.**

###### **Inspectors.**

Inspectors are authorized to perform day-to-day inspection and monitoring of the Licensee's work and are assigned by the USG, the Licensing Officer, or the Technical Representative. The Regional Medical Officer (RMO) will provide health inspection of the facilities. The Facilities Maintenance Officer (FMO) will supervise the maintenance responsibilities of the Licensor in the cafeteria area. The General Services Officer (GSO) will provide inventory control of USG-furnished property. In addition, qualified Inspector(s) may inspect and monitor the services provided by the Licensee.

###### **D.**

###### **Authority to Amend the Agreement.**

In no instance shall the Technical Representative or Inspectors be authorized to amend the Agreement. Only the Licensing Officer may amend the Agreement.

#### **V.**

##### **INSPECTION**

###### **A.**

**Responsibilities of the Licensee.** The Licensee shall develop and maintain an inspection system and schedule intended to ensure quality of service and standards of sanitation and

cleanliness. This system shall include written records of inspections made. These records shall be made available to the Licensor upon request.

B.

Rights of the Licensor.

(1) The Licensor has the right to inspect the cafeteria premises and the mobile cafeteria service, as well as the actual services provided. This inspection may be made at any time, without prior notice. The Licensor shall perform the inspection in a manner that will not unduly delay the work of the Licensee. These inspections may include, but are not limited to, a comprehensive review of the following:

1. Service quality, attentiveness, courtesy, and similar factors;
2. Food quality, presentation, and merchandising;
3. Sanitary practices and conditions;
4. Personnel appearance;
5. Training program techniques, schedules, and records; and
6. Menu compliance, as indicated in the minimum acceptable menu profile.

(2) Premises of the Licensee may be inspected at no charge to the Licensor. The Licensee shall provide all reasonable facilities and assistance for the safe and convenient performance of these duties.

(3) Financial records of the Licensee, pertaining to any food and beverage service operation as provided for through this Agreement, may be inspected by the Licensor's auditor or accountant, Licensing Officer, Technical Representative, or representatives from the U.S. State Department's Office of Commissary and Recreation.

(4) The Regional Medical Officer (RMO), the Licensor's Technical Representative, and/or professional health and food service inspectors shall perform periodic inspections to assure compliance with Agreement requirements and industry standards.

**VI.**

**TERMINATION**

The Licensor may, at its convenience, terminate this contract, or any part therefore, for such cause considered appropriate by the Licensor. Unless otherwise specified, such action shall take effect 30 days from the receipt of written notice from the Licensor to the Licensee.

In the event that the Licensor determines that the contractor has engaged in fraudulent or dishonest business practices, the Licensor may, at its discretion, terminate this contract, or any part thereof, immediately and without prior notification to the Licensee. Upon termination, Licensee shall remove all of its property from the premises. The Licensor shall not be responsible for any loss or damage incurred by the Licensee as the result of

termination, including but not limited to losses due to spoilage of inventory, employee claims, personal property losses, and lost profits.

In the event that the Licensee may want to terminate the contract, the Licensee shall provide the Licensor a written notice 90 days prior to termination.

## **VII.**

### **TERMS OF AGREEMENT**

#### **A.**

##### **General.**

Exhibit A sets forth several reports which the Licensee is required to submit to the Licensor.

#### **B.**

##### **Fixed Fee and Charges.**

The Licensee shall pay to the Licensor the fixed fee of U.S. Dollars 200 per month and 5 percent of its monthly gross receipts in Kenya shillings. These will be payable in the subsequent month. The fee is for the use of the facility and the right to provide the services as discussed in this contract.

#### **C.**

##### **Financial Statements, Invoices, and Payments.**

The Licensee shall provide complete quarterly financial statements no later than the 15<sup>th</sup> business day of the following month. Monthly gross receipts report should be provided no later than the 15<sup>th</sup> business day of the subsequent month. All financial statements submitted by the Licensee must only indicate the business conducted at the U.S. Embassy. Licensor invoices will be provided to the Licensee no later than the 15<sup>th</sup> of each billing period. Payments are due within five business days of invoice receipt.

#### **C.**

##### **Mission Closures.**

The Licensor shall not be held responsible for any variation in employee population figure since the extent of occupancy is not guaranteed. However, should the Licensor become aware in advance of a temporary or permanent change in potential customers, the Licensee will be informed. *See Exhibit A for specifics on the operation of the food and beverage service facilities.*

## **VIII.**

### **SPECIAL LICENSING AGREEMENT PROVISIONS**

#### **A.**

##### **Security Access to Property.**

The Licensor reserves the right to deny access to USG -owned and operated facilities to any individual. The Licensee will provide names and biographic data of all personnel (including back-up personnel) who will be used under this Agreement; this data will be

provided at least fourteen (14) days before they begin work. The Licensee will submit all individuals to the U.S. Embassy's Regional Security Office (RSO) for interviews and fingerprinting prior to regular access. If the Licensee's candidate is not cleared by the RSO, the candidate will not be allowed to work on the compound's premises. If found working on the premises, the uncleared personnel will be immediately removed from the compound.

B.

Standards of Conduct.

The Licensee shall be responsible for maintaining satisfactory standards of employee attitude, competency, conduct, cleanliness, appearance, and integrity. Licensee's employees are expected to be polite and courteous when dealing with Embassy personnel. Each Licensee employee is expected to adhere to standards of conduct that reflect credit on themselves, their employer, and the U.S. Embassy. For example, Licensee's management and staff are required to respect and follow the Discriminatory Harassment Policy as outlined in Exhibit D. The Licensee shall be responsible for taking disciplinary action with respect to employees as may be deemed necessary. In the case of inaction in regards to discipline on the part of the Licensee, the Licensor reserves the right to revoke compound access to any employee for failure to comply with the standards of conduct.

C.

Personal Injury, Property Loss or Damage Insurance.

The Licensee, at its own expense, shall maintain insurance against fire, theft, flood, liability, and for employee medical and employment expenses, as required by Kenyan law. Insurance should cover all Licensee-owned and operated equipment behind the service counter. The Licensee shall provide certification that the required insurance has been obtained before beginning work.

D.

Indemnification.

The Licensor shall not be responsible for personal injuries or for damages to any property of the Licensee, its officers, agents, and employees or any other person arising from any incident of the Licensee's performance under this Agreement. The Licensee expressly agrees to indemnify and exempt the Licensor, its officers, agents, servants, and employees from and against any claim, loss, damages, injury, and liability, however caused, resulting from or arising out of the Licensee's fault or negligence in connection with the performance of work under this Agreement. Furthermore, any negligence or alleged negligence of the Licensor, its officers, agents, servants, or employees, shall not bar a claim for indemnification unless the act or omission of the Licensor, its officers, agents, servants, or employees is the sole competent and producing cause of such claim, loss, damages, injury, or liability.

E.

Force Majeure.

Neither party shall be liable for any failure of or delay in the performance of this Agreement for the period that such failure or delay is a result of Acts of God, war, external or political strikes, embargoes, Embassy evacuation or any other force majeure event which is beyond the control of that said party.

F.

Protection of American Embassy Buildings, Equipment, and Grounds.

The Licensee shall use reasonable care to avoid damage to U.S. Embassy buildings, equipment, and grounds. If the Licensee's failure to take adequate care results in the damage to any property, the Licensee shall repair the damage at no expense to the Licensor as directed by the Licensing Officer.

G.

USG-Furnished Property.

(1) The USG shall provide the property described in Exhibit B to this Agreement.

Delivery of this property is completed when it is made available in the space designated for the Licensee's use in its operation of the cafeteria. The Licensee shall acknowledge in writing to the Licensing Officer receipt of the USG-owned equipment listed in Exhibit B.

(2) Title to all USG-furnished property shall remain with the USG. The Licensee shall use the property only in connection with this Agreement.

(3) The Licensor and GSO shall maintain the official property control records of all USG-furnished property.

(4) Upon taking delivery of the USG-furnished property, the Licensee assumes the risk and responsibility for its loss or damage, except--

- (a) For reasonable wear and tear; or
- (b) As otherwise provided in this Agreement.

H.

Precedence of English Language Translation.

In the event of any inconsistency between the English language translation of this Agreement and any other language translation, the English language translation shall take precedence.

**IX.**

**DISPUTES**

If the Licensing Officer and Licensee fail to reach agreement over any disputed issue resulting from this Agreement, the sole remedy to both parties shall be referral of the disputed issue to the U.S. Embassy Management Counselor. That official's ruling shall be considered final for both parties.

## **LIST OF EXHIBITS**

### **EXHIBIT A:**

Performance Required under the Licensing Agreement

### **EXHIBIT B:**

Licensors and USG -Furnished Property

### **EXHIBIT C:**

Holiday Schedule

### **EXHIBIT D:**

Ethics and Sexual Harassment Regulations

## **EXHIBIT A**

### **PERFORMANCE REQUIRED UNDER THE LICENSING AGREEMENT**

#### **I.**

##### **SCOPE OF WORK.**

The Licensee shall establish and operate in the Licensee's name the food and beverage service facilities, a cafeteria and mobile cafeteria service in the Chancery and USAID building located in the U.S. Embassy compound in Gigiri, for the purpose of dispensing food, beverages, and other items as may be authorized by the Licensing Officer, in accordance with all the terms and conditions specified herein this Agreement. Food and beverage facilities are to be operated for the benefit of all American and Kenyan employees within the compound and any official visitors.

The Licensor shall not be held responsible for any variation in the employee population figure since the extent of occupancy is not guaranteed. However, should the Licensor become aware in advance of a temporary or permanent change in potential customers, the Licensee will be informed.

#### **II.**

##### **DESCRIPTION OF FACILITIES**

###### **A.**

Cafeteria. The Cafeteria is located at the U.S. Embassy, Gigiri, 1<sup>st</sup> floor, Room 1001A and consists of a dining room, balcony, food preparation area, and manager's office. Seating is available for approximately 120 persons in the dining room, and there are a number of tables on the balcony.

Chancery potential staff and visitors to be served daily is 300 to 400.

Lunch and breakfast specials make up the greatest share of sales. The Licensor believes a varied menu serving food for both American and Kenyan employees and visitors will attract a larger clientele.

###### **B.**

##### **Food and Beverage Alcove in USAID Building**

The USAID building are interested in securing mobile cafeteria services located in the ground floor of the USAID building next to the elevator/lifts.

USAID staff to be served daily is approximately 150.

Services to be provided include the provision of both hot and cold beverages, and the provision of selection of small food items including pastries, sandwiches, chips, and other snacks deemed appropriate.

### **III.**

#### **HOURS OF SERVICE**

A.

Schedule. Service for the Cafeteria is required from 0700 – 16.30 hours, Monday – Thursday and 0700 – 1400 hours on Friday. Full service is required during the peak hours of 7:00 a.m. – 9:30 a.m. and 11:30 a.m. – 2:30 p.m. During non-peak hours the cafeteria should provide hot and cold beverage service and a variety of snacks. Service for the Food and Beverage Alcove in USAID will be for the morning hours of 7:00 a.m. – 12:30 p.m.. All food and beverage service facilities will be closed on official USG and Kenyan holidays. The holiday schedule is shown in Exhibit C.

B.

Schedule Modifications. The Licensor may change the hours and days of operation to be consistent with changes in Embassy policy. Licensee requests to modify hours or days of service shall be submitted to the Licensing Officer for approval at least five working days before the desired modifications. In addition to routine service, the Licensee may also be approached by employees within the Embassy to cater evening meals, weekend events, luncheons, and special events. The Technical Representative and the Regional Security Officer (RSO) must approve all events held on the U.S. Embassy compound.

### **IV.**

#### **RESPONSIBILITIES OF THE LICENSEE**

A.

General. The Licensee shall provide prompt, efficient, and courteous service, and avoid undue interference with the operation of the Embassy while service is provided. Local licenses and permits shall be obtained as required, and all applicable U.S. building, health, sanitary, and other regulations and laws shall be observed. The Licensee shall employ sufficient and suitable personnel, secure and maintain insurance, maintain records, submit reports, and observe other Agreement requirements, all as more specifically set forth herein. The Licensee shall pay each and every fee, cost, or other charge incident to or resulting from operations under the Agreement. Reasonable care shall be exercised in the use of space and USG or Licensor-owned equipment and, upon Agreement termination, the Licensee will yield such space and equipment in as good a condition as when received, except for ordinary wear and tear, and damage or destruction beyond the Licensee's control and not due to the Licensee's fault or negligence.

B.

Service.

The Licensee shall operate and manage food and beverage service facilities in the Licensee's name within buildings in the U.S. Embassy compound in Gigiri. Preorder service by phone from all employees will be provided. The Licensee shall remove any soiled dishes, provide clean dishes, and assure that tables and chairs are cleaned before

each patron is seated. Dining facilities should leave a favorable impression of the U.S. Embassy to guests and employees. Space, facilities, and equipment provided by the USG and Licensors must be consistently maintained in optimum condition and appearance.

C.

Menus.

It shall be the responsibility of the Licensee to provide distinct American, Continental, and Kenyan menu items, using quality ingredients and beverages, at reasonable prices. A reasonably priced tea/coffee service menu should also be provided for Mission office events. The variety and appearance of food in the cafeteria on each operating day shall be consistent with approved food service standards and comparable to American and European business cafeterias.

The Licensee shall plan and advertise advance daily and weekly menus near the service counter.

The Licensee shall make a reasonable effort to adhere to the range of menus and prices submitted in its offer. If the Licensee determines that prices must be raised, it shall notify the Licensing Officer of the price increases (item by item) and a justification supporting these increases at least twenty (20) business days before the effective date of the desired price increase.

D.

Equipment and Utensils Provided by the Licensee.

The Licensee provides all disposable takeaway items and replace small items such as crockery, tableware, cutlery, utensils and cookware to supplement items provided by USG.

E.

Sanitation and Quality.

(1)

The Licensee shall serve tasty, appetizing, and quality food under clean and sanitary conditions.

(2)

All foods served shall be fresh and free from spoilage, free from adulteration and misbranding, and safe for human consumption. Uncooked items, such as fresh fruits or vegetables, shall be clean and free from blemish. All foods shall, when served, be attractive in appearance and correct in temperature and consistency. They shall be crisp, moist, dry tender, etc. as may be appropriate in each case. Care will be taken to avoid cross-contamination of food items and notify customers of potential food allergens (e.g. peanut, shellfish, etc.).

(3)

The Licensee's employees shall wear a distinctive item of clothing, such as a badge or uniform, as a means of identification during the time they are in the building. The Licensee's employees shall wear proper uniforms, including hairnets and/or head covers, during the time they are performing their duties. Uniforms should be laundered regularly and have no visible stains or spots.

(4)

Hands should be cleaned repeatedly after using toilet facilities, cleaning products, handling garbage, and handling money.

(5)

Health Exams: The Licensee, at his own expense, shall have each employee receive the following health exams prior to employment and yearly. The result of these exams will be given to the Embassy's Regional Medical Officer (RMO) for review.

(a) Chest x-ray;

(b) Exam of: Mouth, Lungs, Skin; and

(c) Blood, Urine, and Stool Tests

F.

Personnel and Supervision.

(1)

The Licensee shall employ sufficient personnel to maintain sanitary conditions and satisfactory customer flow-through, in order to ensure prompt and efficient service at all times. All employees shall be sober, conscientious, neat, and courteous. The Licensee shall at all times provide an adequate number of food service employees to perform the varied and essential duties inherent to a successful food service operation.

(2)

The Licensee shall require that each employee assigned to work under this Agreement sign, or otherwise acknowledge, a statement that he or she is neither employed by the USG or Licensor and is not entitled to any rights or benefits of the USG or Licensor.

(3)

Licensee employees must be approved by U.S. Embassy security before working under this Agreement. The Licensee shall furnish personal history forms of all employees the Licensee proposes to work under this Agreement. These forms are available from the Regional Security Office (RSO).

(4)

The Licensee shall employ a full-time manager unless the Licensee is an individual, in which case that individual may serve as the manager.

(5)

Employees of the Licensee shall be fully capable of performing the type of work for which they are employed.

(6)

The Licensee shall provide adequately trained relief personnel to substitute for the regular employees when they are absent so that a high quality operation will be maintained at all times. These substitute personnel must have received prior approval by the RSO.

(7)

The Licensee and its employees shall comply with instructions pertaining to conduct and building regulations in effect for the control of persons in the building.

(8)

The Licensee is required to schedule an employee training program that will continue for the duration of this Agreement and any extensions thereof to ensure that employees perform their jobs with the highest standards of efficiency and sanitation. Training records indicating who participated and when, must be available to the Licensing Officer upon request.

(9)

All articles found by the Licensee, the Licensee's agents or employees, or by patrons and given to the Licensee shall be turned in to the Community Liaison Office (CLO) as lost and found items.

G.

Trash Removal.

The Licensee shall remove trash from all food and beverage service areas anytime that waste canisters are full or not less than once after every meal service, whichever is greater.

H.

Rodent and Pest Control.

The Licensee shall maintain a clean work area free of any clutter, dirt, or any material that would attract rodents and vermin.

I.

Licensee Performed Repairs.

The Licenser will perform preventive maintenance and repair of the equipment listed in Exhibit B. The Licensee shall submit a work order to the Licensing Officer on the Embassy's standard form for all repair requests.

J.

Cleaning and Janitorial Services.

(1)

The Licensee shall provide all cleaning and sanitation supplies and cleaning equipment, including dishwashing and floor cleaning products, air freshener, brooms, mops, trash bags, hand sanitizer etc. that are per USG specification.

(2)

The Licensee shall furnish labor and supervision sufficient to maintain the cafeteria in a clean, orderly, and sanitary condition at all times. Before beginning work, the Licensee shall submit to the Facilities Maintenance Officer the brand names or manufacturer of any materials proposed for use in connection with this Agreement. The Facilities Maintenance Manager may reject any material considered unsuitable for the purpose or harmful to the surfaces to which it is to be applied.

(3)

The Licensee shall perform cleaning and janitorial services on a regular schedule and shall meet the highest standards of sanitation common to the food service industry. The Licensee shall use the following cleaning schedule. The Licensing Officer may require increases in this schedule if conditions require more frequent cleaning.

(a) Food and Service Facilities and Dining Halls

After each meal or service:

Furniture, floors, and food serving areas: Clean and sanitize after each service or meal.

Cold drink dispensers: Clean and sanitize daily.

Garbage: Remove after each service or meal.

Table cloths: Replace after each meal.

(b) Kitchens

(1) After each meal or service:

Food service preparation area: Clean and sanitize after every service or meal.

Cookers: Clean after each service or meal.

Small appliances, pots, pans, utensils, and crockery: Clean and sanitize after each use.

(2) Daily Basis:

Refrigerator: Clean floors and shelves daily.

Chillers and freezers: Clean and sanitize floors daily.

Walls: Clean every second day.

(3) Weekly:

Windows: Clean weekly.

Refrigerators: Sanitize weekly.

Stoves: Clean hoods and filters weekly.

Freezers: Clean and sanitize shelves weekly.

(4) Monthly:

Exhaust system for cooker: Check and clean once a month or more often as needed.  
Freezers and chillers: Clean and sanitize walls once each month.

(5) Quarterly:

Strip and wax all resilient tiles of the floors

(6) Semi-annually.

Exhaust system: Perform cleaning of exhaust pipes, and clean all fans and ventilators.  
Walls: Clean the tile walls in kitchen and dining areas.

(7). Licensee's failure to keep any of the facilities in a clean condition may result in the withdrawal of the privilege of using such facilities. In addition, the Licensing Officer or Technical Representative reserves the right to have the facility cleaned by other means and charge the cost of such work to the Licensee.

K.

Security areas.

The Licensee shall be responsible for the security of all areas under its operational jurisdiction. Designated employees shall have the responsibility for determining that all equipment has been turned off, windows are closed, lights and fans are turned off, and doors are locked when the cafeteria is closed.

L.

Hazardous conditions.

The Licensee shall eliminate unsanitary or hazardous conditions that are dangerous to anyone using the food facility. This shall include any employee, agent, or representative to the Licensee, U.S. Embassy employees or other patrons of the food service facility for any portion of the facility that is under the operational jurisdiction of the Licensee.

M.

Liability.

The Licensor will not be responsible in any way for damage or loss occasioned by fire, theft, accident, or otherwise to the Licensee's stored supplies, materials, or equipment, or employees' personal belongings. The Licensee shall report any personal injury or physical damage to the building or equipment resulting from fire or other causes to the U.S. Embassy's Facilities Management Officer immediately.

N.

Fire and civil defense drills.

The Licensee shall notify the fire department in the event of fire. In addition, the Marine Guard at Post One, the RSO, and the Facilities Management Officer shall be immediately notified. All of the employees of the Licensee shall be organized and trained to participate in fire and civil defense drills including the reporting of fires. This shall be accomplished with the cooperation of the Facilities Maintenance Officer and the RSO.

O.

Billing Procedures:

Patrons will pay the Licensee directly using Kenya Shillings. The U.S. Embassy will make no payments to the Licensee.

P.

Inventories:

(1) The Licensee will be asked to sign for the inventory of the USG- provided equipment and supplies located behind the counter in the kitchen, as listed in Exhibit B of this Agreement. The Licensee shall exercise reasonable care in the use of facilities, equipment, and supplies and return the same in good condition when the Agreement ends. The Licensee shall not be liable for normal wear and tear or damage beyond its control. Should the Licensee wish to install or use locked facilities, it must obtain GSO approval and leave the keys with the Marine Guard at Post One.

(2) Flatware, China, and Glassware Inventories:

The Licensee assumes the responsibility of maintaining the flatware, china and glassware provided. Once a month on the first Saturday of the month, the Licensee shall provide an inventory of all Licensor provided flatware, china and glassware in the cafeteria. The Licensee will be responsible to replace at their own expense any loss of inventory caused by other reasons than normal wear and tear. The Licensee will also conduct an annual inventory with GSO.

V.

**RESPONSIBILITIES OF THE LICENSOR.**

A.

Agreement to Operate the Facility.

The Licensor agrees to grant to the Licensee for a period of one year the right to establish, manage, and operate a cafeteria in the U.S. Embassy for the production and sale of food, beverages, and other products as the Licensor may authorize.

B.

Use of Facilities.

The Licensor will provide space for operations under the Agreement as indicated. It will provide adequate ingress and egress, including a reasonable use of existing elevators, corridors, passageways, driveways, and loading platforms. The Licensor will provide space heating, space lighting, ventilation, and utilities. In addition, the Licensor will:

(1) Make such improvements and alterations as it may deem necessary, including improvements and alterations necessary to conform to applicable sanitary requirements.

(2) Maintain and repair building structures in areas assigned for the Licensee's use, including:

- ☐ ☐ painting and redecoration;
- ☐ ☐ maintenance or gas, water, steam, sewer, and electrical lines;
- ☐ ☐ ventilation and electrical lighting fixtures (including relamping);
- ☐ ☐ floors and floor coverings; and
- ☐ ☐ walls and ceilings.

The Licensee shall bear the expenses of repairs necessary because of negligence on the part of the Licensee or its employees.

(3)

At its own expense, provide, install, and permit the Licensee to use the equipment listed and additional equipment of a similar type when required for any expansion approved by the Licensing Officer. The Licensor will replace equipment that it has provided as it deems necessary. Subject to adequate operation and handling of equipment by the Licensee, the Licensor will replace component parts of, and make repairs to, such equipment.

C.

USG-owned Equipment.

USG-furnished equipment is listed in Exhibit B. The USG and Licensor will provide all major equipment items, some flatware, china, and glassware EXCEPT disposal items such as paper plates, bowls, replacement flatware, cooking utensils, and any other cooking equipment not listed in Exhibit B which must be supplied by the Licensee.

**VI.**

**RIGHTS AND AUTHORITY OF THE LICENSOR**

A.

Oversight.

The Licensing Officer shall oversee the quality of the services provided by the Licensee and the reasonableness of the prices charged. The Licensing Officer may conduct periodic surveys of cafeteria customers and advise the Licensee of any source of dissatisfaction and request correction.

B.

Public Space.

The Licensor reserves the right to use the dining areas and other public spaces at other than serving periods for meetings of Licensor employees or other assemblies. After each use, the Licensor will clean and rearrange the space without expense to the Licensee.

**VII.**

**RESTRICTIONS**

A.

Equipment.

Unless otherwise permitted by the Licensing Officer, the Licensee shall not install equipment other than that specified in this Agreement or remove any Licensors-owned equipment from the premises.

B.

Patronage.

The facilities and services provided in this Agreement are for the benefit and convenience of U.S Embassy employees. The Licensors may regulate patronage from other sources.

C.

Federal Holidays.

No work shall be performed on Embassy holidays. Exhibit C provides a listing of scheduled U.S. and Kenyan holidays for which the U.S. Embassy will be closed.

D.

Facilities.

The physical facilities within the Embassy shall not be used in connection with operations not included in the Agreement. The Licensee may, however, utilize centralized food preparation and storage sources located elsewhere and bring goods to the Embassy daily.

**VIII.**

**DEFINITIONS** The following definitions pertain to this Agreement.

- A. AEA: American Employees Association (interchangeable with "Licensor")
- B. GSO: General Services Office
- C. FMO: Facilities Maintenance Office
- D. Licensing Officer: AEA Board of Directors, with the authority to enter into, administer, and/or terminate Agreements and make related determination and findings.
- E. Licensee: The individual or company that has entered into an Agreement with the Licensor.
- F. Technical Representative: That person designated by the Licensing Officer (AEA Board of Directors) to oversee Agreement activities and compliance by the Licensee.
- G. RSO: Regional Security Office of the American Embassy.
- H. RMO: Regional Medical Officer.

## **EXHIBIT B**

### **LICENSOR AND USG-FURNISHED EQUIPMENT/MATERIALS**

The USG will provide through the Licensor all major kitchen equipment items, basic flatware, china and glassware. The Licensor will NOT provide disposal items such as paper plates, bowls, plastic flatware, cooking utensils, and any other cooking equipment not listed below.

All equipment description and property numbers are listed on Report: DOS 6052.

<b>Description</b>	<b>Property Number</b>
Refrigerator Fridge	018467
Oven, Griddle with Oven	018469
Dishwasher	018473
Wash Rack 3-Hole basin	018474
Wash rack 2-Hole Basin	018475
Range, Electric with Oven	061867
Range, Electric	061868
Ice Maker	061870
Coffee Blender	061908
Toaster, Double sandwich toaster	076077
Range, Electric Model E36	075841
Range Electric, Model MEH14	075842
Oven, Microwave Model MS 283MC	043735
Refrigerator, Freezer Model DT1200/HDD	060449
Refrigerator, Freezer Model DT670/HD/D	060449
Ice maker Model K5590	06050
Miscellaneous Appliances	077196
Deep Fryer, Frymaster	

## **EXHIBIT C**

### **HOLIDAYS SCHEDULE**

#### **Holiday Schedule 2015**

Following are the American and Kenyan Holidays to be observed by the U.S. Mission in Kenya during calendar year 2015:

<b>Day/Date</b>	<b>Holiday</b>	<b>Remark</b>
Thursday, January 1	New Year's Day	American/Kenyan
Monday, January 19	Birthday of Martin Luther King, Jr.	American
Monday, February 16	Washington's Birthday	American
Friday, April 3	Good Friday	Kenyan
Monday, April 6	Easter Monday	Kenyan
Friday, May 1	Labour Day	Kenyan
Monday, May 25	Memorial Day	American
Monday, June 1	Madaraka Day	Kenyan
Friday, July 3	Independence Day	American
Saturday, July 18	Idd ul Fitr *	Kenyan
Monday, September 7	Labor Day	American
Monday, October 12	Columbus Day	American
Tuesday, October 20	Mashujaa Day	Kenyan
Wednesday, November 11	Veterans Day	American
Thursday, November 26	Thanksgiving Day	American
Saturday, December 12	Jamhuri Day **	Kenyan
Friday, December 25	Christmas Day	American/Kenyan

\*Yet to be confirmed, Idd ul Fitr will be observed as a public holiday subject to the sighting of the moon and as announced by the Chief Kadhi.

\*\* Jamhuri Day is on Saturday December 12 and as such, there will be no day off from work for this holiday.

## **EXHIBIT D**

### **DISCRIMINATORY HARASSMENT POLICY**

#### **Department of State**

The Department of State is committed to providing a workplace that is free from discriminatory harassment. Employees must not harass anyone because of race, color, gender, national origin, religion, physical or mental disability, sexual orientation, or because the person is over 40 years old. Employees also must not harass someone for opposing discrimination or for participating in the discrimination complaint process.

Sexual harassment is addressed separately in the Department's Policy on Sexual Harassment.

All Department employees, including but not limited to staff, supervisors, and senior officials, must comply with this policy. All employees are also expected to take appropriate measures to prevent discriminatory harassment. Employees who believe they are being harassed for one of the reasons listed above or who witness potential harassment are encouraged to report it so that the conduct can be stopped before it becomes severe or pervasive and rises to a possible violation of law.

#### **What Is Discriminatory Harassment?**

Discriminatory harassment is verbal or physical conduct that denigrates or shows hostility toward an individual because of his or her race, color, gender, national origin, religion, age (over 40), physical or mental disability, sexual orientation, or because of his or her opposition to discrimination or his or her participation in the discrimination complaint process. In general, harassment is against the law when it creates an intimidating, hostile, or offensive working environment, or when it interferes with an individual's work performance.

Some examples of conduct that might constitute harassment include:

- ☐ racial epithets, "jokes," offensive or derogatory comments, or other verbal or physical conduct based on an individual's race/color;
- ☐ ethnic slurs, workplace graffiti, or other offensive conduct directed towards an individual's birthplace, ethnicity, culture, or foreign accent;
- ☐ verbal or physical abuse, "jokes" or offensive comments based on an individual's age, gender, disability, or sexual orientation; and
- ☐ making, posting, e-mailing, or circulating demeaning or offensive pictures, cartoons or other materials in the workplace that relate to race, ethnic origin, gender or one of the other protected categories listed above.

The harasser can be a supervisor, co-worker, other Department employee, or a non-employee who has a business relationship with the Department.

### **The Department's Responsibilities Under This Policy**

If the Department receives an allegation of discriminatory practice at the Food and Beverage Kiosk in Consular Waiting Area or has reason to believe such harassment is occurring, it will take the steps necessary to ensure that the matter is promptly investigated and addressed. If the allegation is determined to be credible, the Department will take immediate and effective measures to end the unwelcome behavior. The Department is committed to taking action if it learns of possible discriminatory harassment, even if the individual does not wish to file a formal complaint.

The Office of Civil Rights (S/OCR) is the main contact point for questions or concerns about discriminatory harassment. S/OCR is responsible for investigating or overseeing investigations of alleged discriminatory harassment. S/OCR is committed to ensuring that all investigations are conducted in a prompt, thorough, and impartial manner.

Supervisors and other responsible Department officials who observe, are informed of, or reasonably suspect incidents of possible discriminatory harassment must immediately report such incidents to S/OCR, which will either initiate or oversee a prompt investigation. Failure to report such incidents to S/OCR will be considered a violation of this policy and may result in disciplinary action.

S/OCR will provide guidance as needed on investigating and handling the potential harassment. Supervisors should take effective measures to ensure no further apparent or alleged harassment occurs pending completion of an investigation.

The Department will seek to protect the identities of the alleged victim and harasser, except as reasonably necessary (for example, to complete an investigation successfully). The Department will also take the necessary steps to protect from retaliation those employees who in good faith report incidents of potential discriminatory harassment. It is a violation of both federal law and this policy to retaliate against someone who has reported unlawful harassment. Violators may be subject to discipline.

Employees who have been found by the Department to have discriminatorily harassed others may be subject to discipline or other appropriate management action. Discipline will be appropriate to the circumstances, ranging from a letter of reprimand to suspensions without pay to separation for cause. A verbal or written admonishment, while not considered formal discipline, may also be considered.

### **Employees' Rights and Responsibilities Under This Policy**

Any employee who believes he or she has been the target of discriminatory harassment is encouraged to inform the offending person orally or in writing that such conduct is unwelcome and offensive and must stop.

If the employee does not wish to communicate directly with the offending person, or if such communication has been ineffective, the employee has multiple avenues for reporting allegations of discriminatory harassment and/or pursuing resolution.

Employees are encouraged to report the unwelcome conduct as soon as possible to a responsible Department official. It is usually most effective—although it is not required—that the official be within the employee’s supervisory chain. Responsible Department officials include first- or second-line supervisors, the offending person’s supervisor, the post’s management officers, the bureau’s Executive Director, and the Office of Civil Rights (S/OCR).

In addition to reporting harassment concerns to a responsible Department official, employees who believe they have been subjected to discriminatory harassment may choose to pursue resolution in several other ways, including:

- ☐ Mediation: Mediation is an informal way to resolve office problems using a trained mediator who facilitates communication between the parties to the dispute. If an employee chooses to attempt resolution through mediation, management is obligated by Department policy to send a representative to the table. If a resolution is not reached, the parties may continue to pursue their rights in any other appropriate forum. Employees may ask for the assistance of a mediator by contacting S/OCR.
- ☐ Grievances: Civil Service employees who are covered by a negotiated grievance procedure may have the option to file a grievance alleging discriminatory harassment if permitted by the governing collective bargaining agreement. Civil Servants who are not covered by a negotiated grievance procedure generally may not bring grievances alleging discriminatory harassment. Members of the Foreign Service may file grievances on EEO matters; however, pursuant to 3 FAM 4428, they must elect to file either a grievance or an EEO complaint. If a Foreign Service employee elects to file a grievance, the Grievance Staff (HR/G) will investigate the allegations and recommend a resolution to the Deputy Assistant Secretary responsible for rendering the agency decision on grievances.
- ☐ EEO processes: All U.S. citizen employees or U.S. citizen applicants for employment may file an Equal Employment Opportunity (EEO) complaint with the Department. Individuals who wish to file an EEO complaint **must** consult a Department of State EEO counselor within 45 days of the most recent harassing incident. A list of EEO counselors is available on S/OCR’s website at

[socr.state.gov](http://socr.state.gov). It is recommended, but it is **not** necessary, for an employee to complain to his/her supervisor or other responsible official before approaching an EEO counselor. (Note: Personal services contractors and third-party contractors may not, depending on the circumstances, be able to pursue an EEO claim against the Department; they may contact S/OCR for guidance.)

- Processes for Foreign Service Nationals (FSNs): Issues raised by FSNs are handled according to complaint processing procedures available on the S/OCR website at [socr.state.gov](http://socr.state.gov). FSNs with questions about post procedures should contact the post's senior management officer and/or designated EEO counselor. FSNs may also contact S/OCR for guidance.
- Sexual Orientation Complaints: Persons bringing sexual orientation complaints may not use the EEO process, because such complaints are not covered by civil rights laws. The Department, however, has prohibited sexual orientation discrimination as a policy matter, and has established a comprehensive complaints process for such situations. The process is explained in the Foreign Affairs Handbook at 3 FAH-1 H-1520. Employees may also be able to use a negotiated grievance procedure, or appeal to the Merit Systems Protection Board or the Office of Special Counsel.

## ENCLOSURE 2

### **TENDER PREPARATION INSTRUCTIONS, EVALUATION OF TENDERS, AND AWARD SELECTION**

#### **I. INSTRUCTIONS ON TENDER PREPARATION**

##### A.

General Information: Submit an original and two copies of the tender, prepared in such format and detail as to enable the Licensor to make a thorough evaluation. The tender package shall be an electronic document in .pdf, .doc, or .rtf format. The document should be transmitted via e-mail with a subject line that reads “U.S. Embassy Cafeteria Tender – *company name*.” Identify and explain any deviations, exceptions, or assumptions taken regarding any of the instructions or requirements.

##### B.

Submission Deadline. Submit the complete tender by 3.00p.m., January 29, 2015 to:

NairobiAEA@state.gov

##### C.

Contents of Tender. The first part of the tender will address general information about the person/firm submitting the tender, including experience, resume and references for key personnel. The second part of the tender will address the performance requirements.

**EACH TENDER MUST BE SIGNED BY A PERSON AUTHORIZED TO BIND THE FIRM. ACKNOWLEDGE ANY AMENDMENTS TO THIS INVITATION TO TENDER IN THE FIRST PART OF THE TENDER SO THE EVALUATORS CAN BE CERTAIN THAT THE TENDER REFLECTS ANY CHANGES TO TERMS AND CONDITIONS.** Address the following areas in the order shown below:

#### Part I - General Information

##### (a).

**Personnel Background.**

Provide curriculum vitae and references for key personnel. Key personnel include:

- Business Manager
- Chef de cuisine
- Quality Control manager

Please indicate if one person will serve in multiple positions.

(b)

Prior Quality of Service and Experience.

List all contracts and Licensing Agreements your company has held over the past three years for the same or similar work. Provide customer's name, address, and telephone numbers, dates, and number of personnel providing the services, dollar value and financial arrangements, brief description of the work, and any terminations and the reason for termination.

(c)

Financial Capability. Describe your company's financial condition and capability. State what percentage of your company's estimated total business the work under this solicitation would entail during the period of any Agreement. Provide a current financial statement. Describe any assets other than cash, accounts receivable, land, buildings, or equipment carried on existing company balance sheets.

(d)

Other General Company Information. Provide copies of recent health inspections, Insurance, organizational chart or description of the technical team for the Cafeteria.

Part II – Performance Required

(a)

Menu cycle and variety.

(1) State the length of your standard and made-to-order menu cycle and how often it changes throughout the year. Provide the complete standard and made-to-order menu cycle that you will implement, showing portion size and selling prices. Include your policy for featured specials, promotional events, and merchandising practices.

Summarize the number of daily items under each food category, such as luncheon entrees, vegetables, salads, desserts, beverages, soups, bread and rolls, breakfast items, sandwiches, specials, grill items, etc. Summarize the total number of different items in each category for the complete menu cycle.

(2) For purposes of putting together offers, the following historical information may be of use.

Embassy surveys have indicated a preference for a variety healthy and fun meals and snacks as:

**Breakfast**

Omelets & Eggs

Toast/Bagels/Croissant

Pancakes and Healthy Cereals

Fruit Salad

Samosas

**Lunch**

American Salad Bar

Hamburgers  
Hot Roast Sandwiches and Grilled Sandwiches  
Mexican, Mediterranean, Indian & Asian Foods  
Pasta and Pizzas  
Homemade Soups  
Fresh Fish  
Chili  
Fried/Roast Chicken  
Mixed Grills  
Quiches/Veggie/Meat Pies  
Chips/Fries

**Snacks and Beverages**

Donuts & pastries  
Cookies & Cakes  
Coffee/Tea Cappuccino  
Ice Cream  
Fresh Fruit and Healthful foods

- o Consistently the Salad Bar is a primary item wanted in the Cafeteria.
- o Establishing a menu line directed toward the American clientele will attract an increasing number of American patrons to the cafeteria.
- o Including in the menu line traditional Kenyan dishes that are reasonably priced is a priority.

(b)

Menu portion, prices and standard unit measurement price. State your pricing policies and procedures for establishing portion sizes and prices. Provide a complete menu price and portion book. Provide a separate tea/coffee service menu for Office meetings.

(c)

Sanitation. Include standards, operating requirements, sanitation training programs, inspection procedures, frequency schedules, and management reports.

(d)

Licensee's Maintenance, Use and Inventory Programs. Discuss use and inventory programs for all equipment and supplies used in performance of the Agreement. A preventative maintenance program shall include repairs, replacement, and other capital rehabilitation work.

(e)

Quality Control. Discuss methods to ensure quality food ingredients and preparation and customer service. Food quality indicators should include food temperature, taste, and

presentation. Customer service quality indicators must include customer wait time, food satisfaction, and service satisfaction.

D.

Additional Procedures

(1)

Amendment of Invitation to Tender. If this Invitation to Tender is amended, all terms and conditions not amended remain unchanged.

(2)

Media of Tenders. Original offers should be submitted electronically via e-mail to the following e-mail address:

[NairobiAEA@state.gov](mailto:NairobiAEA@state.gov).

After receipt of tenders, negotiations may be held. Additionally, individuals/companies submitting tenders may be requested to provide an oral presentation and food/beverage samples.

(3)

Timeliness of Tenders. Tenders must be received electronically via e-mail to the designated e-mail address for receipt of tenders, not later than the time and date specified in this Invitation to Tender. No tender received after the due date and time will be considered.

E.

Site Visit and Conference. A site visit and conference will be held on January 13, 2015 at 10.00 a.m. Interested parties should register by calling Anar Shah on 3636272. The conference is intended to provide interested parties with the opportunity to discuss the requirements of this Invitation to Tender and the site visit will allow interested parties to view the area in which the cafeteria operations will take place. Interested parties are urged to submit written questions using the email address provided in this Invitation to Tender at least two business days before the date of the conference.

## **II.**

### **EVALUATION OF TENDERS AND SELECTION FOR AWARD**

A.

Evaluation. To be acceptable and eligible for evaluation, tenders must be prepared following the instructions in Section I above and must meet all the requirements set forth in the other sections of this Invitation to Tender. A complete standard and made-to-order menu cycle that you will implement, showing portion size and selling prices must be provided. All tenders will be evaluated using the information presented as requested above in Section I.C., "Instructions on Tender Preparation - Contents of Tender".

B.

Selection for Award. Award selection will be based on the best approach, taking into consideration the desire for quality service at reasonable menu prices, in combination with past service quality and experience. The Licensor may award this Agreement solely on the basis of the evaluation of the initial offers, without any negotiations, request for food samples, or oral presentations. Therefore, tenders should be submitted on the most favorable terms possible.